

## REMARKS

Claims 27, 31, 34, 45, 47 and 61-66 are pending. Claims 1-26, 28-30, 32-33, 35-44, 46 and 48-60 are canceled. New Claims 61-66 are added.

Applicant gratefully acknowledges the courtesy extended by the Examiner to Applicant's representative during the 17 February 2004 personal interview.

Applicant gratefully acknowledges the indication in the Office Action that Claim 31 contains allowable subject matter. Claim 31 has been revised to incorporate the subject matter of Claim 30, from which it depended. Claim 27 has been amended to correspond to allowable Claim 31, and is therefore likewise allowable for at least the same reasons.

In the Office Action, the Examiner rejects Claims 16-18, 23-24, 26-28, 30, 32, 34-35, 45-47 and 49-60 under 35 U.S.C. § 102(e) over U.S. Patent No. 5,758,257 to Herz, et al. (Herz). Applicant notes that the cancellation of Claims 16-18, 23-24, 26, 28, 30, 32, 35, 46, and 48-60 renders the rejection moot with respect to these claims. With respect to pending Claims 27, 34, 45 and 47, this rejection is respectfully traversed.

With respect to Claim 27, Applicant respectfully submits that Claim 27 has been amended to correspond to allowable Claim 31, and is therefore likewise allowable for at least the same reasons.

With respect to Claims 34, 45 and 47, Applicant notes that these claims variously encompass concepts disclosed in the originally filed application, see for example the specification at pages 54-55.

Herz fails to disclose or suggest scheduling a commercial within a predetermined time interval (e.g., 5 minutes) of an instance of content, for example

of sexual or violent content, that is above a certain level. Herz likewise fails to disclose or suggest scheduling a commercial no closer than a predetermined time interval (e.g., 20 minutes) of an instance of content that is above a certain level.

Accordingly, Herz fails to disclose or suggest: *scheduling said one advertisement within the program within a predetermined time interval of a predetermined value of the instantaneous content level of the program information label*, as recited in Claim 34.

Herz likewise fails to disclose or suggest *scheduling the presentation of an advertisement based upon the at least one aspect of the content of the information, wherein the advertisement is scheduled to be presented within a predetermined time interval of the content of the information having the at least one aspect*, as recited in Claim 45.

Herz likewise fails to disclose or suggest *scanning the program information label to ascertain the instantaneous content level of the program over the duration of the program, and scheduling an advertisement within a predetermined time interval of an occurrence of the instantaneous content level above a predetermined threshold value*, as recited in Claim 61.

Herz likewise fails to disclose or suggest *scanning the program information label to ascertain the instantaneous content level of the program over the duration of the program, and scheduling an advertisement outside a predetermined time interval of an occurrence of the instantaneous content level above a predetermined threshold value*, as recited in Claim 63.

Herz likewise fails to disclose or suggest *scheduling the presentation of an advertisement based upon the at least one aspect of the content of the information*,

*wherein the advertisement is scheduled to be presented outside a predetermined time interval of the content of the information having the at least one aspect, as recited in Claim 65.*

*Herz likewise fails to disclose or suggest and determining one of a plurality of advertisements to be run during said program based upon the instantaneous content level of the program, and scheduling said one advertisement within the program outside a predetermined time interval of a predetermined value of the instantaneous content level of the program information label, as recited in Claim 66.*

In the Office Action, the Examiner rejects Claims 33, 44 and 48 under 35 U.S.C. § 103(a) over Herz. Applicant respectfully submits that the cancellation of Claims 33, 44 and 48 renders the rejection moot.

In the Office Action, the Examiner rejects Claim 38 under 35 U.S.C. § 103(a) over Herz in view of U.S. Patent No. 5,710,815 to Ming (Ming). Applicant respectfully submits that the cancellation of Claim 38 renders the rejection moot.

All rejections have been addressed. Applicant respectfully submits that the application is in condition for allowance, and requests favorable consideration on the merits and prompt allowance. In the event any questions arise regarding this communication or the application in general, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 24 February 2004

By: \_\_\_\_\_



M. David Ream

Registration No. 35,333

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620